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The Arab State and Women's Rights: The Trap of Authoritarian Governance

Elham Manea

Researchers studying gender politics in Arab societies have been puzzled by a phenomenon common in all Arab states, except for Tunisia and recently Morocco: *The post-colonial and newly emerging Arab states often did not hesitate to grant women their suffrage rights, but they were very reluctant to grant women rights that concerned their private lives.* The modern Arab state has repeatedly turned away from any serious attempt to modernize the laws governing the family sphere. Family laws in Arab states, called Personal Status Laws, have defied modernization and are still governed by religious provisions. Why has this happened?

In general, women in Arab societies have often been granted their suffrage rights quite matter of factly; the exceptions are Kuwait, which did so in 2005, and Saudi Arabia, which still has not done so. Otherwise, it was generally quite easily done. Arab countries used one of two procedures:

- a) In some countries, women were automatically granted those rights as the post-colonial Arab state was established and the state gave voting rights to its citizens in general.
- b) Other states did so when the state deemed that its society was ready for that step.

In either case the state has been the chief actor that made it possible to grant suffrage to women. In the Arab countries, women did not get the right to vote as the outcome of a feminist struggle. Quite to the contrary, these rights were, just as the word literally implies, *given* by the state or *withheld* by it. It was a top-down decision.

On the other hand, the very Arab state that granted women suffrage rights, thus liberating them in the public sector at least on the legal level, made no attempt to act accordingly when it came to women's private lives. In fact, with the exception of Tunisia in 1956 and to a lesser extent Morocco in 2004 (in addition to the formerly communist South Yemen), all Arab states have been reluctant to modernize their family laws – which are called personal status codes in the Middle East and North Africa - in a way that integrates the concept of gender equality in family relations.

These laws, whether they apply to Muslims, Christians, or Jews, have been derived mainly from their respective religious canons.

The practice of letting theological interpretations influence decisions on family affairs took two forms in Arab states. First, some countries, including Egypt, Bahrain, Lebanon, Qatar and Saudi Arabia, have no unified personal status code, so the issue is left entirely to

the judiciary, “*which is heavily influenced by the conservative nature of classical Islamic jurisprudence*”.¹

Second, other Arab states, including Jordan, Algeria, Kuwait, Yemen, and Syria, have codified provisions of Islamic jurisprudence into a unified law that applies to Muslims. Non-Muslims in Egypt, Syria, Lebanon, Jordan, and Iraq are subject to their various religious canons in family matters, except for issues related to inheritance and wardship.² Family laws may be less discriminatory in some Arab countries than in others. As a rule, personal status laws in North Africa are more progressive than in the Arab East. However, certain characteristics are common to family law in all Arab states, with Tunisia and Morocco again the exceptions. These include, as the Fourth Arab Human Development Report maintains, the notion that men are women’s keepers and have a degree of command over their lives. This notion has been translated into laws obliging husbands to support their wives financially while ordaining their wives to obey them, laws that grant men alone the right to unilaterally divorce their wives and the right to require their return in the event of revocable divorce, and laws restricting women’s ability to marry, move, work, or travel freely without the consent of their male relatives or husbands.³

Family law in Arab states has been one area where the state has been very hesitant to interfere. Again, I ask, why this has been the case? Why has the Arab state been reluctant to modernize family laws and adopt a civil code that integrates the concept of gender equality in family relations?

To answer this question I suggest an approach to the study of gender politics in Arab states and argue that several features of the Arab state, specifically its lack of legitimacy, its elites’ dependence on a traditional base of power, and its constant juggling of politics of survival, all have a direct bearing on its gender politics, which I will highlight here using the category of family laws. I argue that there is a logic behind the state’s reluctance to change the laws that regulate the structure of the Arab family and its relations in Arab societies, and that the logic is connected to the crux of Arab politics: survival. I suggest the authoritarian of the Arab state and its features may explain a great deal about the way it conducts its politics, including its gender politics.

To illustrate this approach in this paper I will use Syria and Yemen – countries where I conducted field work – as case studies.

¹ UNDP, *Arab Human Development Report 2005: Towards the Rise of Arab Women*, 189.

² Ibid.

³ Ibid, pp. 191-195; For a thorough and updated overview of the family laws and personal status codes in Arab states, see Ekaterina Yahyaoui-Krivenko, *Interaction between International Instruments on Women’s Human Rights and Islam*, Thesis N 666, Geneva University, 2004.

The Authoritarian State

Neither modern nor traditional, the Arab state has yet to reach the Weberian model of a modern state, which is legal, rational, and impersonal, bases its actions on law, and gears its policies towards maintaining legitimacy. And a modern state treats its citizens as equal before the law. Simply put, there is no Arab citizen. Rather, what we have are ethnicized members of tribal, religious, sectarian, regional, and/or linguistic communities. In other words, a citizen of an Arab state is first and foremost a member of his or her immediate ethnic community.

The Arab state is a product of all the factors that shaped it. This approach suggests that to capture the authoritarian nature of the Arab state and connect it to its gender politics one has to look first at the social fragmentation that characterized Arab societies before their independence or establishment as legal states.

Social fragmentation and division were features of Arab societies before they fell under Ottoman rule and certainly well before they were colonized or administered by colonial powers. Using the example of Yemen and Syria: the former has been divided along tribal (Adnan/Gahtan, Hashid/Bakil, etc.), sectarian (Zaydi/Shafite), and regional lines (North/South, Hathramout, Abien, Aden, etc.); and the later, Syria, has been fractured along sectarian (Sunni/Alawite/Druzi/Ismailis, religious (Muslim/Christian/Jew) and linguistic (Arab/Kurd/Armenian/Circassian) lines.

How the Ottomans and colonial powers used, instrumentalized, or furthered these divisions is an important aspect to examine. Looking more closely at the Ottoman policies one realizes that they fostered the hegemony of Sunni elites over non-Sunnis and non-Muslims while keeping religious, sectarian, and denominational divisions intact. Very tellingly, the family legal systems adopted during that period simply mirrored the division of these societies. Hence, family laws during the Ottoman period mirrored three key elements:

- The hegemony of Sunni jurisprudence over that of non-Sunni Muslims;
- The fragmentation of society along religious, denominational, and sectarian lines, as each community had its own family law; and
- Tribal autonomy as tribes' customary laws – called *al Orf* – regulated their family affairs

The family laws in most Arab societies today reflect these same features.

The colonial powers either actively fostered these social divisions or left them untouched. The most important colonial legacy, however, was the introduction of borders into a region that had none. This process introduced a new institutional reality: states with fixed borders equipped

with institutions erected over time to emulate their colonial models. The borders were charted arbitrarily, rarely reflecting a solid local base of authority, in the process trapping these divided communities within legal entities called states. And the institutions were shallow images that lacked any historical institutional or legal tradition.

Why is the Arab state still stuck in this pattern of politics? The answer has to do with these factors that shaped it. In fact, looking at the process through which most Arab states were created, excluding Tunisia and Egypt, one realizes that we are in fact dealing with artificial creatures: these states were erected by external forces during historical moments, shaped to serve interests that were rarely congruent with those of the local population, with borders established without much consideration of local social realities. Most importantly, what was strikingly lacking in most of these state's projects was a desire among all segments of the population to be included in the new state.

Together these two factors – social division and a lack of institutional foundation – have been the Achilles heel of the Arab state from the very moment of its inception, for three reasons.

- The state came to represent the interests of a dominant group: a religious denomination, a sect, a tribe or a region
- Other social groups were pushed to accept the institutional reality of a state that has rarely considered them equal citizens. In fact, the state that was supposed to be impersonal, and treat its citizens as equals, has been acting as an ethnic bodyguard of the interests of the ruling elites
- The lack of solid institutional foundation made it possible for the 'ethnicized' elites to hijack the state's institutions to their benefit.

How is all this relevant to the study of gender politics in Arab societies? The key is that it explains the contradictory features of Arab gender politics. One has only to look at the features of the Arab authoritarian state to fathom why this state has been so reluctant to act to emancipate its women.

Features of the Arab Authoritarian State

The Arab Authoritarian state has three features: it lacks legitimacy, its ruling elites depend on a traditional base of power, and it is constantly engaged in the politics of survival. The

three features prevent the state from following coherent gender politics and sometimes make it act against its rhetorical declared objective of women's emancipation.

First, the Arab state lacks legitimacy. Or more precisely, the ruling elite lacks any legitimate claim to power. When the Arab state was born it faced two kinds of pressure: *inter-state pressures* that emanated from social divisions (tribal, sectarian, religious, linguistic, etc.); and *external pressures* from regional actors, who conspired to alter the nature of these regimes if not swallow them altogether. Concurrently, these states were caught up in the push-and-pull of two conflicting ideologies: Pan-Arabism and Pan-Islamism. Both were the antithesis of a nation state with defined boundaries and citizens who were equal before the law, and consequently have often acted to further undermine these states' legitimacy. Over time, lack of legitimacy became a feature of the system. It is now manifest in three indicators.

The state lacks alternation of power. In Yemen the president Ali Abdullah Salih, has been ruling since 1978, and is grooming his son to follow him. In Syria the late Hafez al-Assad ruled from 1970 till 2000, and his son Bashar took power after him.

It includes an unofficial political sphere, where the president, emir, or king can, if he chooses, make decisions that transcend the state's institutions and constitution.

The governments face no independent oversight or accountability. Immunity and impunity is a fact, and cannot be challenged, and it has been evident in different forms.

Second, Traditional Base of Power. These states lacked legitimacy in the early decades after independence, when the leaders of many Arab states were facing one challenge after another and one threat of a military coup after another. This situation pushed these leaders to depend on their traditional base of power, which, ironically, further damaged their legitimacy. In Yemen and Syria it was possible to discern two circles in the traditional base of power: the inner and outer.

The inner circle of the power base includes the immediate clan members: the ruler's immediate tribal/sectarian clan. In Yemen the president is a member of the Sanhan tribe, part of the Zaydi Qahtani Hashid tribal confederation. In Syria, the Assads are members of the Alawite clan, from Qardaha in Latakia province. They have relied on their sectarian group and on members of their tribe, the Kalbyia and other tribes of the Alawite minority including the Khayatin, the Haddadin, and the Matawira.

The wider circle of the power base upon which the two political systems depend features both diversity and fluctuation. It includes those religious, sectarian, tribal, or regional groups which are marginalized, discriminated against, or feel threatened within the larger

system, or simply aspire to be part of the political system and gain some of its spoils. This circle has proved vital for the survival politics of the ruling elite which has often played on the sense of victimization, fear, or ambition among these social groups, and then played them against other competing political powers or against each other.

Third, the Politics of Survival. The third feature of the Arab state is its constant engagement in the politics of survival, defined here to indicate a leader's shifting alliances with various political and social groups and his allocation and channeling of resources to these groups to ensure his hold on power and to survive in a hostile regional environment. In other words, and in a Machiavellian sense, this means undertaking whatever is necessary to survive in the shifting sands of Arab politics. These leaders must juggle, in tandem, different and sometimes competing interests, and they must simultaneously direct these strategies to the ultimate aim of this politics: staying in power. To achieve this end, the state leader resorts to various kinds of actions which include non-merit appointments and dirty tricks.

Within the Arab context, state leaders have resorted to two additional strategies of survival. One is to shift their alliances with social groups within the wider circle of the traditional base of power in order to weaken competing political groups that threaten their authority. By nature these alliances are ephemeral – they shift along with the sands of politics. Another is playing the Islamic card. Here the state leader takes advantage of the phenomenon of political Islam. He endorses certain Islamist groups rather than others and forges political alliances with them. The main aim of this strategy is political: to deploy the support of Islamist groups as a means of legitimizing his rule in a religious sense or/and delegitimizing that of his rivals. The tactic has also been instrumental in undermining rival Islamist groups that pose real challenges to the state's leadership, and sidelining, or even gaining the reluctant support of, other political groups that fear the rise of political Islam in their societies. Here, the leader deliberately takes advantage of fear. This may be fear of Islamic fundamentalism and its intolerance of non-Sunni, non-Shiite, or non-Muslim groups, fear of the tyranny of a theocratic rule, or fear of being branded as anti-Islamic.

Following this approach, I argue that these three features of the Arab authoritarian state have shaped its gender politics. More specifically, the results of this study suggest, as state leaders juggle the politics of survival, they often make alliances with social groups in the wider circle of the traditional base of power, especially to exploit the Islamic card; these alliances have been detrimental to the Arab states' gender politics and have made the governments reluctant to change family laws.

Looking at how state leaders acted regarding family laws, one does see a 'logic' behind their political conduct. That logic can be summarized in one word: opportunism. In other words, I suggest that the Arab authoritarian state is neither liberal nor patriarchal in the way it pursues its gender politics. Rather, it is opportunistic, acting always in a Machiavellian manner. This has meant that if it made sense politically the state would act in favor of women's emancipation. But if it did not, it would not. The Islamists, on the other hand, have had a principled position towards the gender issue and that has further complicated the matter for women's emancipation in Arab states. Often, the Arab state has engaged in alliances with the Islamists in its attempt to weaken and delegitimize the opposition (leftists, nationalists, secularists, or democracy advocates).

Let's examine how the interplay between the three features of the Arab state reflects on the issue of family laws in Yemen and Syria.

Family Laws

The politics of survival, and the type of social power base that Arab elites depend on, explain why these states have refrained from modernizing their family laws. In North Yemen, once the dust settled after the civil war, which lasted between 1962-1967, and the power struggle was resolved in favor of a tribal/sectarian military elites, a family law was promulgated. Its provisions, which combined elements of the two denominations Zaydism and Shafite, were conservative, gender biased, and well suited to a tribal society. In such a society, marriage is not a bond between two individuals. It is a tribal affair that aims to strengthen tribal ties and solidarity. Male guardianship is therefore indispensable if marriages are to be contracted according to the interest of the tribe, and polygamy is essential to increase the tribe's numbers.

In Socialist South Yemen, the picture was certainly complicated. Acting on its socialist ideology, the state promulgated an emancipated family law. But simultaneously it refrained from prohibiting polygamy as Tunisia did in 1957. Looking at the party leaders' base of power, one realizes that they depended on the support of their respective regions in the conservative tribal hinterland. Prohibiting polygamy would have alienated the very base the leaders sought to win. Very tellingly, the way the Socialist Party implemented its gender-friendly laws reflected this reluctance of its leadership – a reluctance that only increased as the political crisis at the center intensified. Indeed, it did not push for these rights in the

hinterland and in the process it exacerbated the division between an emancipated Aden (the center) and a conservative hinterland (the periphery).

As North and South decided to unify, those involved in the negotiations over unification avoided discussing the family law. The issue was too contentious and the leaderships of the two parts were determined not to discuss issues that had the potential to disrupt the negotiation. Because they both placed a priority on unification, they agreed to postpone working on the law until after unification.

Two years after unification, the Southern leadership, which was expected to defend its emancipated family law, simply agreed to give it up in favour of another that was in effect a copy carbon of the gender-biased Northern family law. Looking at the political context, one realizes that this leadership was the weaker partner in the unification and needed it more as a way out of economic collapse. It was further weakened by the political maneuvering of President Salih, who was making inroads with the Southern leadership's most vocal critic, the Islamist party Islah. Nor was this leadership ever really a champion of women's emancipation. Taking all these factors together, it becomes clear why one of the most emancipated laws in the Arab world was struck down so matter-of-factly.

In Syria, after independence, the state adopted legal pluralism in its family law system. That has meant a system that divides its citizens along religious, denominational, and sectarian lines. It allows each religious community to run its family affairs independently according to its religious provisions, but Islamic jurisprudence still takes priority in disputes between Muslims and non-Muslims, and Sunni Islamic jurisprudence over that of Shiites and Alawites. This system was quite adequate for the Sunni elites who governed Syria after independence: it guaranteed their superiority within the system. Add to that the fact that these leaders depended for re-election on the support of their rural base of power and that the leaders of religious minorities, especially Christians, deeply opposed any attempt to interfere in their family affairs, treating the issue as a symbol of their independence. When we take all these factors into account, the logic behind the system of legal pluralism falls into place.

When the al-Assad regime came to power it did not change this law or the legal pluralism of the Syrian family system. It left it intact even though it discriminates against its own minority. My analysis showed that the Syrian regime did so because of its very sectarian character: it has refrained from changing the Sunni family law because it fears antagonizing the Sunni majority which resents the Alawite sect's control of power. The issue is very sensitive and the Sunni Muslim Brothers have constantly challenged the regime on sectarian grounds; surely the Assad regime was not about to open up another explosive front for the

sake of a more gender-friendly law. Most important, given that the Assad regime has managed to survive by playing on the fear of minorities and by using the divide-and-rule principle, it has had to rely on legal pluralism to preserve the division between Syria's religious communities. This strategy ensured the preservation of parallel societies that never seem to mingle, leaving the regime as the only arbiter capable of holding all the system's strings together.

Obviously in the two countries, Yemen and Syria, the state's politics of survival and its propensity to give in to the demands of its traditional base of power have shaped the type of family laws they choose. But the issue at hand here far exceeds the mere politics of survival and the base of power the elites must accommodate.

In fact, one very interesting finding of this study has been that the religious nature of the family laws applied in the two countries perpetuates the social fragmentation in the two societies, and thus preserves each state's features. In Syria, regardless of which religion's family law we are taking about, all family laws make it practically impossible for members of different religious or sectarian communities to marry. And in Yemen family laws preserve the tribal nature of their states. In the two countries, all family laws mention that the guardian has the right to dissolve a marriage if the groom is not 'fit' or 'suitable': *Kafaa*. The *Kafaa* provision has been instrumental in the two countries as a way to prevent marriages between sects, religions and tribes.

In fact, family laws are the tool that has helped perpetuate the very authoritarian nature of the Arab state: it has kept the society divided, hindering intermarriage between Sunnis and Shiites, Christians and Muslims and Jews, superior tribes and inferior tribes etc. In the process, in each country, it has sabotaged the development of a national identity. In other words, these laws have served to keep intact the elite's traditional base of power in all its fragmented sectarian, religious, tribal, and regional forms. No wonder that scholars and intellectuals have kept repeating the same statement since the inception of the modern Arab state: There are no citizens in Arab states, only members of ethnic, religious, regional, tribal, or sectarian communities.

The system perpetuates itself, leaving the Arab state stuck in a trap. Lack of legitimacy has led elites to depend on a traditional base of power and to permanently juggle the political situation in order to survive. Dependence on that traditional base of power made it practically impossible to modernize family laws or introduce the concept of civil marriage. And reliance on strategies of survival has made it impossible to develop coherent gender politics or any

commitment to women's emancipation. The end result is that society's fragmentation is maintained and cemented.